IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

CORDELL WASHINGTON, et al PLAINTIFFS

VERSUS CIVIL ACTION NO. 4:99CV307-P-B

HOUSEHOLD BANK (ILLINOIS) N.A., et al DEFENDANTS

MEMORANDUM OPINION

This cause is before the Court on the plaintiffs' Motion to Remand and Supplemental Motion to Remand, as well as the defendants' Motion to Stay Proceedings and Transfer Venue. The Court, having reviewed the motions, the response, the authorities cited, and being otherwise fully advised in the premises, finds as follows, to-wit:

PROCEDURAL AND FACTUAL BACKGROUND

Plaintiffs are Mississippi residents who purchased satellite systems. They seek recovery for alleged misrepresentations and irregularities concerning the price and financing terms of the sales. Plaintiffs filed their complaint in the Circuit Court of Humphreys County on October 25, 1999 against Household Bank (Illinois) N.A., Household Retail Service, Inc., Combined Cable Systems, Inc., Delta TV, Home Cable Company (MS), National Cable of Mississippi, C.A.M.P. Unlimited, Inc., Rural Communications, Inc., Safeguard Electronics Plus, Home Cable Company (TN), Sharon Satellite Personal Cable, The Satellite Shop, and several "John Doe" defendants.

The thirteen count complaint asserted a right of recovery based on the following state law theories:

1. Breach of Covenant of Good Faith and Fair Dealing;
2. Economic Duress;
3. Negligence;
4. Intentional, Gross, and Negligent Infliction of Emotional Distress and Mental Anguish;
5. Constructive Fraud;
6. Fraud;
7. Breach of Contract and Tortious Breach of Contract;
8. Rescission and Cancellation;
9. Violation of the Mississippi Unfair or Deceptive Acts and Practices Act;
10. Violation of the Mississippi Home Solicitation Sales Act;
11. Negligent Hiring, Training and Supervision;
12. Conspiracy; and
13. Punitive Damages

The complaint specifically repudiated any intent to predicate recovery on federal law.

Defendants Household Bank (Illinois) N.A. and Household Retail Service, Inc. were served with process on November 17, 1999 and November 18, 1999 respectively. Thereafter, on or about December 14, 1999, Household Bank and Household Retail filed a Notice of Removal.[1] The Notice alleged that this Court had subject matter jurisdiction based on 28 U.S.C. §§ 1331.

Plaintiffs responded by filing a timely Motion to Remand, in which they assert issues of lack of subject matter jurisdiction. Thereafter, on January 26, 2001, the defendants filed a Supplemental Notice of Removal in which they asserted the recent bankruptcy filing[2] of named defendant Home Cable Concepts of Tennessee, Inc. (hereafter Home Cable) as an additional ground in support of this Court's jurisdiction. Plaintiffs again sought remand by way of a Supplemental Motion, asserting the same grounds raised in their earlier motion and arguing that the intervening bankruptcy does not require

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[1] The above-referenced defendants were the only defendants who had been served with the summons and complaint and the time of removal.

[2] Home Cable filed a Voluntary Petition in Bankruptcy in the United States Bankruptcy Court for the Middle District of Tennessee on December 3, 1999.

[3] Instead, the plaintiff advocates the "dismissal" of Home Cable as a defendant, urging that an Order doing so would effectively eliminate any relationship between the instant case and the pending

this Court's exercise of jurisdiction.[3] As a further argument, plaintiffs urge that the Court should bring certain abstention principles to bear in declining to exercise jurisdiction.

The motions have been fully briefed and are ripe for decision. In addition to the remand issues raised by the plaintiff, the defendants also press their Motion to Stay Proceedings and Transfer Venue.

LEGAL ANALYSIS

I. Subject Matter/Removal Jurisdiction

Defendants assert two bases for this Court's power to hear this case: jurisdiction predicated on federal question jurisdiction under 28 U.S.C. § 1331[4] and jurisdiction pursuant to 28 U.S.C. §§ 1334 and 1452. The Court will address each of these issues in turn.

A. Federal Question Jurisdiction Pursuant to § 1331

It is the defendants' contention that the plaintiffs' complaint is inextricably tied to the interpretation and application of federal legislation, i.e., the Truth In Lending Act. 15 U.S.C. § 1601 et seq.[5] They assert that the plaintiffs' effort to eschew a federal right of action in favor of a recovery grounded on state law is a poorly disguised effort to mask an essentially federal claim. The plaintiffs vigorously contest such a notion and steadfastly proclaim their unbridled rights as "masters of their complaint."

Whether a case "arises under" federal law is determined by reference to the "well-pleaded complaint rule." The Fifth Circuit explained the rule in the following fashion:

Generally, under section 1331, a suit arises under federal law if there appears on the

bankruptcy proceedings involving Home Cable in Tennessee.

[4] Defendants also raised 28 U.S.C. § 1337 as a basis for the removal; however, neither side devoted any time to briefing this issue; accordingly, the Court refrains from considering the matter.

[5] The defendants' Notice of Removal also references several other statutory provisions including the Fair Debt Collection Practices Act, 15 U.S.C. § 1692a, et seq.; the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.; and the Fair Credit Billing Act, 15 U.S.C. § 1666, et seq. However, inasmuch as the defendants fail to brief this issues, the Court will not examine these statutes as a basis for this Court's exercise of jurisdiction.

> face of the complaint some substantial, disputed question of federal law. . . . Accordingly, to support removal, the defendant must locate the basis of federal jurisdiction in those allegations necessary to support the plaintiff's claim, ignoring his own pleadings and petition for removal. A defendant may not remove on the basis of an anticipated or even inevitable federal defense, but instead must show that a federal right is "an element, and an essential one, of the plaintiff's cause of action."

Carpenter v. Wichita Falls Indep. Sch. Dist., 44 F.3d 362, 366 (5th Cir. 1995)(citations omitted).

In the event a plaintiff asserts claims which have a basis in both federal and state law, the plaintiff as "master" of his complaint may decline to press his federal claims in favor of litigation premised exclusively on state law–effectively defeating the possibility of removal, but accepting the risk that his federal claim may one day be barred. Id. "Jurisdiction may not be sustained on a theory that the plaintiff has not advanced. Merrell Dow Pharmaceuticals, Inc. v. Thompson, 478 U.S. 804, 809 (1986).

> The singular exception to the well-pleaded complaint rule is the artful pleading doctrine. [I]n certain situations where the plaintiff necessarily has available no legitimate or viable state cause of action, but only a federal claim, he may not avoid removal by artfully casting his federal suit as one arising exclusively under state law. Although a defense, preemption may so forcibly and completely displace state law that the plaintiff's cause of action is either wholly federal or nothing at all.

Id. at 366 (emphasis added).

No federal claim appears on the face of plaintiffs' complaint, and as mentioned infra, the complaint itself specifically denies that the relief sought is based on any federal law. Nonetheless, the defendants assert that plaintiffs' right of recovery turns entirely on whether the defendant complied with disclosure provisions established by the Truth in Lending Act and its accompanying regulations, i.e., review of the allegations of plaintiffs' complaint necessarily reveals the federal character of the suit.

The complaint in the present case enumerates several theories of recovery predicated on state common law and Mississippi statutory provisions. The defendants in this case target several theories of recovery in particular–breach of the implied covenant of good faith and fair dealing, intentional infliction of emotional distress, as well as negligence–in asserting that certain of plaintiffs' claims fail to state a viable cause of action under state law. They argue that because plaintiffs cannot establish the requisite elements on their claim for breach of the duty of good faith and fair dealing, that count of the complaint, if actionable at all, must rely on TILA as a basis for recovery. Defendants' contentions with regard to plaintiffs' negligence and emotional distress claim are much the same: they have as their factual basis the defendants' alleged failure to disclose certain facts at the time of sale: according to the defendants, state law imposes no such duty–the only source of such an obligation is TILA.

While the Court perceives numerous flaws in the defendants' reasoning, it is unnecessary to delve too deeply to resolve the issue. The Fifth Circuit's opinion in Waste Control Specialists, LLC v. Envirocare of Texas, Inc., 199 F.3d 781, 783 (5th Cir. 2000) makes it abundantly clear that the artful pleading doctrine does not apply in the absence of complete preemption. See also Garrett v. Hurley State Bank, Civil Action No. 3:99CV783WS (S.D. Miss. September 29, 2000). Stated plainly, only in situations where the federal legislation completely preempts state law is removal proper.

Defendants' assertion that recovery is dependent on plaintiffs' ability to establish a TILA violation is inapposite. More accurately stated, defendants assert their compliance with TILA as a defense to the plaintiff's state law claims. Defendant has cited no authority holding that TILA completely preempts state tort law insofar as credit disclosures are concerned. Instead, authority is to the contrary. Magee v. Exxon Corp., 135 F.3d 599 (8th Cir. 1998); Jackson v. Bank One, 952 F.

Supp. 734 (M.D. Ala. 1996); General Electric Capital Auto Lease, Inc. v. Mires, 788 F. Supp. 948 (E.D. Mich. 1992). Defendants also failed to offer any authorities, either controlling or persuasive, which hold that the doctrine of complete preemption applies to the additional statutory provisions cited in the Notice of Removal. After due consideration, this Court concludes that the artful pleading doctrine is inapplicable in this case. The removal is not supported by federal question jurisdiction pursuant to 28 U.S.C. § 1331.

B. Bankruptcy Jurisdiction

Title 28, section 1452(a) provides for removal jurisdiction of cases as follows: "A party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title." Review of § 1334(b) reveals a broad jurisdictional grant over bankruptcy cases and those cases having some relation to a case in bankruptcy: "Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." Id.

For purposes of determining whether a matter falls within bankruptcy jurisdiction, it is only necessary to decide whether the matter is at least "related to" the bankruptcy. In re Wood, 825 F.2d 90, 93 (5th Cir. 1987). In most cases, the "usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." Moreover, "[a]n action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." In re Pacor, Inc., 743 F.2d 984, 994 (3rd Cir. 1984). See also Matter of Zale Corp., 62 F.3d 746, 752 (5th Cir. 1995); In re Wood, 825 F.2d 90, 93 (5th Cir. 1987)(referencing the same test for purposes of "related to" jurisdiction).

The Court finds that this case "relates to" a case under Title 11. As argued by the defendants, despite the fact that Home Cable has yet to be properly joined as a defendant in the instant case, there exists the potential for claims by other defendants against Home Cable for contribution and indemnification. The potential impact on the estate in bankruptcy if Home Cable becomes liable to the non-debtors in claims for contribution and indemnification is sufficient to establish a conceivable impact on the estate in bankruptcy. Mickey v. Beneficial National Bank, Civil Action No. 4:99CV270-D-B, Order dated April 5, 2000. See also In re Dow Corning Corp., 86 F.3d 482, 486 (6th Cir. 1996).

C. Mandatory Abstention Pursuant to 28 U.S.C. § 1334(c)(2)

What the bankruptcy jurisdiction statute giveth with one hand, it taketh away with the other. Title 28, section 1334(c)(2) of the United States Code provides:

> Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

Id. The foregoing provision requires a district court to abstain from hearing a proceeding under the following circumstances:

1. Upon timely motion by a party; and
2. Involving a proceeding based on state law; and
3. The action is one which merely "relates to" a case under title 11; and
4. The action is one which could not have been commenced in federal court except under 28 U.S.C. § 1334 (bankruptcy jurisdiction); and
5. An action is commenced and can be timely adjudicated in a state court.

Dean v. American General Finance, Inc., 191 B.R. 463 (M.D. Ala. 1996). Each of the above elements is satisfied in this case. The plaintiffs filed a timely motion to remand, asserting abstention as one of the grounds therefor; and the case is a state law action. The case, while "related to" a case under title 11, is not one arising under title 11 or arising in a case under title 11, and the Court's findings relative to the removal issue make it clear that the plaintiff's cause of action could not have been brought in federal court absent the Court's bankruptcy jurisdiction. Finally, plaintiffs commenced the action in state court in the first place and there is no reason to believe that the matter cannot be timely adjudicated there upon remand. Accordingly, the Court is required to abstain from hearing this action proceeding and the procedural posture of the case requires that it be remanded to the state court from which it came.

II. Motion to Stay Proceedings and Transfer Venue

Defendants urged in their Motion to Stay and in their response in opposition to the Motion to Remand, that this Court is without authority to decide the remand issues by virtue of the stay provision contained in 11 U.S.C. § 362. The defendants' position is without merit. The automatic stay provision operates only to preclude collection efforts (in this case, litigation) against the debtors, not other co-defendants. See GATX Aircraft Corp. v. M/V Courtney Leigh, 768 F.2d 711 (5^{th} Cir. 1985)l; Wedgeworth v. Fibreboard, 706 F.2d 541 (5^{th} Cir. 1983). Accordingly, the defendants' Motion to Stay Proceedings is not well-taken and should be denied. Likewise, the Motion to Transfer Venue is not well-taken and should be denied based on the Court's analysis of § 1134(c)(2), the mandatory abstention provision, as discussed supra.

CONCLUSION

For the above and foregoing reasons, the Court finds that the plaintiffs' Motion to Remand and Supplemental Motion to Remand are well-taken and should be granted. As to the defendants' Motion to Stay Proceedings and Transfer Venue, said motion is not well-taken and should be denied. An order will issue accordingly.

This, the _______ day of June, 2001.

W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE